

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ABBOTT LABORATORIES, et al. :

Plaintiffs, :

-v.- :

MATTHEW FRANK, :

Defendant. :

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1:17-cv-06002-CBA-LB

**DECLARATION OF
DERRELLE M. JANEY, ESQ.
IN SUPPORT OF MOTION TO
DISMISS AND STRIKE**

STATE OF NEW YORK)
)ss.
COUNTY OF NEW YORK)

I, **Derrelle M. Janey, Esq.**, being duly sworn, depose and declare the following to be true under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am a partner at the law firm Gottlieb & Janey LLP, attorneys for defendant Matthew Frank in the instant action. My law firm also represents HMF Distributing, Inc. and Howard Frank in the related case, *Abbott Laboratories et al. v. Adelpia Supply USA et al.*, 1:15-cv-05826-CBA-LB (the “Diversion Case”), which I am also personally handling. As such, I am fully familiar with the facts and circumstances of this case.

2. I make this Declaration in support of the motion filed on behalf of Mr. Frank for an order pursuant to Rule 12(b)(6) and Rules 8 and 9(b) of the Federal Rules of Civil Procedure dismissing the Complaint against Mr. Frank; for an order pursuant to Rule 12(f) of the Federal Rules of Civil Procedure striking certain of Plaintiffs’ pleadings in their Complaint as described in the accompanying moving papers; and for an order granting such further relief to Mr. Frank as the Court deems just and proper.

3. Attached hereto as **Exhibit A** is a true and accurate copy of the Plaintiffs’ Complaint against Mr. Frank in the instant action.

4. Attached hereto as **Exhibit B** is a true and accurate copy of the transcript of the pre-motion hearing before the Honorable Judge Carol B. Amon on Plaintiffs' application to add Mr. Frank as a defendant in the Diversion Case, which resulted in the filing of the complaint against Mr. Frank in the instant action.

5. Annexed hereto as **Exhibit C** is a true and accurate copy of the Stipulation and Order dated January 11, 2017 dismissing Mr. Matthew Frank from Diversion Case without prejudice on the basis that Plaintiffs had believed Mr. Matthew Frank to be the principal of and "moving, conscious, active force" behind the conduct of defendants HMF Distributing, Inc. and Wholesale Diabetic Supplies, Inc., and then came to understand that his father, Howard Frank, was the principal and "moving, conscious, active force" of these entities.

6. Annexed hereto as **Exhibit D** is a true and accurate copy of the Rule 30(b)(6) deposition of HMF Distributing, Inc., in the Diversion Case, by witness Tina Kearns.

7. Annexed hereto as **Exhibit E** is a true and accurate copy of the documents produced to Plaintiffs in discovery in the Diversion Case, identifying the vendors and customers from whom HMF purchased and to whom HMF sold international FreeStyle test strips.

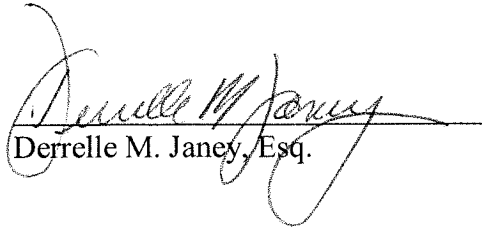
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SIGNATURE PAGE FOLLOWS.]

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Respectfully submitted,

Dated: New York, New York
October 30, 2017


Derrelle M. Janey, Esq.

Sworn to before me this 30th day of October 2017



Notary Public

SARAH A. ADAM, ESQ.
Notary Public, State of New York
No. 02AD6360240
Qualified in New York County
Commission Expires June 19, 2021